DEPARTMENT OF HEALTH

NOTICE OF FINAL RULEMAKING

The Acting Director of the Department of Health, pursuant to the authority set forth in An Act to enable the District of Columbia to receive federal financial assistance under Title XIX of the Social Security Act for a medical assistance program, and for other purposes, approved December 27, 1967 (81 Stat.744; D.C. Official Code § 1-307.02), Reorganization Plan No. 4 of 1996, and Mayor's Order 97-42, dated February 18, 1997, hereby gives notice of the adoption of an amendment to section 946 of Chapter 9 of Title 29 (Public Welfare) of the District of Columbia Municipal Regulations (DCMR), entitled "Residential Habilitation Services." These rules establish standards governing reimbursement by the District of Columbia Medicaid Program for residential habilitation services provided by qualified professionals to participants with mental retardation and developmental disabilities in the Home and Community-based Services Waiver for Persons with Mental Retardation and Developmental Disabilities (Waiver), which were approved by the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services, with an effective date of November 20, 2007.

A notice of emergency and proposed rulemaking was published on December 28, 2007 (54 DCR 12670). No comments were received. The December 28th rulemaking changed the previously published rules at 54 DCR 4394 (May 11, 2007). This rulemaking further changes the December 28th rulemaking to use a fifteen (15) minute billing unit, to adjust rates to prevent duplicate billings for services for individuals whose participation in day/vocational activities exceeds the five (5) hour per day five (5) day per week schedule used in the rate methodology for residential habilitation services, and to require the provider to give ninety (90) days written notice to the government and thirty (30) days written notice to the participants of the intent to terminate residential habilitation services. The new residential habilitation services rules provide a blend of the previously-available services under the former Waiver (*i.e.*, Homemaker Services, Chore Services, Adult Companion Services, and Personal Care Services). This service delivery approach will address the problems encountered, such as different provider qualifications and restrictions for each service when multiple provider agencies and support staff are needed to deliver supports to Waiver participants. The rule is intended to resolve staffing issues which have made it difficult to effectively support individuals in group homes. Residential habilitation service is a twenty-four (24) hour service limited to licensed homes which are owned, leased or otherwise operated by the provider. The reimbursement rates have been modified based on the new rate setting methodology and the collapsing of services into daily rates based on acuity. The acuity system is based on the intensity of staffing required for each group home.

A notice of emergency and proposed rulemaking was published in the *DC Register* on April 18, 2008 (55 DCR 004399). No comments on the proposed rules wee received. No substantive changes have been made. These rules shall become effective on the date of publication of this notice in the *DC Register*.

Section 946 (Residential Habilitation Services) of Chapter 9 of Title 29 DCMR is deleted in its entirety and amended to read as follows:

946 RESIDENTIAL HABILITATION SERVICES

946.1 Residential habilitation services shall be reimbursed by the District of Columbia Medicaid Program for each participant in the Home and Community-based Services Waiver for Persons with Mental Retardation and Developmental Disabilities (Waiver) subject to the requirements set forth in this section.

946.2 In order to qualify for reimbursement under this section, residential habilitation services shall be provided in a Group Home for Mentally Retarded Persons (GHMRP) or similarly licensed group home in other states. Each GHMRP located in the District of Columbia shall be licensed pursuant to the Health Care and Community Residence Facility, Hospice and Home Care Licensure Act of 1983, effective February 24, 1984 (D.C. Law 5-48; D.C. Official Code § 44-501 *et seq.*), no later than sixty (60) days after approval as a Medicaid provider and comply with the requirements set forth in Chapter 35 of Title 22 of the District of Columbia Municipal Regulations DCMR), except as set forth in these rules. In order to qualify for reimbursement under this section, residential habilitation services shall be delivered in a GHMRP or group home licensed or certified in other states that can serve four (4) to six (6) persons.

946.3 Each group home located out-of-state shall be licensed or certified in accordance with the host state's laws and regulations and be consistent with the terms and conditions set forth in an agreement between the District of Columbia and the host state. Each out-of-state provider shall comply with the following additional requirements:

(a) Remain in good standing in the jurisdiction where the program is located;
(b) Submit a copy of the annual certification or survey performed by the host state and provider's corrective action plan, if applicable, to the Department on Disability Services (DDS); and
(c) Allow authorized agents of the District of Columbia government, federal government, and governmental officials of the host state full access to all sites and records for audits and other reviews.

946.4 Residential habilitation services shall only be available to a person with a demonstrated need for continuous training, assistance, and supervision, and shall be authorized and provided in accordance with the person's current Individual Habilitation Plan (IHP) or Individual Support Plan (ISP) and Plan of Care.

946.5 Each provider of residential habilitation services shall assist persons in the acquisition, retention, and improvement of skills related to activities of daily living, such as personal grooming, household chores, eating and food preparation, and other social adaptive skills necessary to enable the person to reside in the community. To accomplish these goals, the provider shall:

(a) Use observation, conversation, and other interactions as necessary to develop a functional analysis of the person's capabilities within the first month of the person's residency;
(b) Prepare a support plan with measurable outcomes using the functional analysis, the IHP or ISP and Plan of Care, and other information available to develop and maintain as appropriate the skills necessary to enable the person to reside in the community while maintaining their health and safety; and
(c) Report quarterly to the person, family, guardian, and DDS Case Manager the outcomes of the programming and support provided to help the person to achieve the identified outcomes.

946.6 Each provider of residential habilitation services shall ensure that each person receives hands-on support, habilitation, and other supports, when appropriate, which shall include, but not be limited to, the following areas:

(a) Eating and drinking;
(b) Toileting;
(c) Personal hygiene;
(d) Dressing;
(e) Grooming;
(f) Monitoring health and physical condition and assistance with medication or other medical needs;
(g) Communications;
(h) Interpersonal and social skills;
(i) Home management;
(j) Mobility;
(k) Time management;
(l) Financial management;
(m) Academic and pre-academic skills;
(n) Motor and perceptual skills;
(o) Problem-solving and decision-making;
(p) Human sexuality;
(q) Aesthetic appreciation; and
(r) Opportunity for social, recreational, and religious activities utilizing community resources.

946.7 Each provider of residential habilitation services shall ensure that each resident receives the professional services required to meet his or her goals as

identified in the person's IHP or ISP and Plan of Care. Professional services may include, but are not limited to, the following disciplines or services:

(a) Medicine;
(b) Dentistry;
(c) Education;
(d) Nutrition;
(e) Nursing;
(f) Occupational therapy;
(g) Physical therapy;
(h) Psychology;
(i) Social work;
(j) Speech, hearing and language therapy; and
(k) Recreation.

946.8 Each provider of residential habilitation services shall ensure the provision of transportation services to enable persons to gain access to Waiver and other community services and activities. The provider shall comply with the requirements governing transportation services set forth in section 1903 of Title 29 DCMR if providing transportation services.

946.9 The minimum daily ratio of on-duty direct care staff to persons present in each GHMRP that serves persons who are not determined by DDS to have higher acuity shall not be less than the following:

(a) 1:6 during the waking hours of the day, approximately 6:00 a.m. to 2:00 p.m., when persons remain in the GHMRP during the day;
(b) 1:4 during the period of approximately 2:00 p.m. to 10:00 p.m.; and
(c) 1:6 during the sleeping hours of the night, approximately 10:00 p.m. to 6:00 a.m.

946.10 Each provider of residential habilitation services shall be a social services agency as described in section 1903.1 of Title 29 DCMR. In addition, the provider shall:

(a) Be a member of the resident's interdisciplinary team;
(b) Have a current District of Columbia Medicaid Provider Agreement that authorizes the provider to bill for residential habilitation Services under the Waiver;
(c) Maintain a copy of the most recent IHP or ISP and Plan of Care that has been approved by DDS for each person;
(d) Have a current Human Care Agreement with DDS for the provision of residential services;
(e) Ensure that all residential habilitation services staff are qualified and properly supervised to include having a plan to provide staff interpreters for non-English speaking persons;

(f) Ensure that the service provided is consistent with the person's IHP or ISP and Plan of Care;
(g) Offer the Hepatitis B vaccination to each person providing services pursuant to these rules;
(h) Provide staff training in infection control procedures consistent with the standards established by the Federal Centers for Disease Control and Prevention (CDC);
(i) Ensure compliance with DDS policies governing reporting of unusual incidents, human rights, behavior management, and protection of person's funds;
(j) Ensure that each residence is accessible to public transportation and emergency vehicles;
(k) Ensure that each group home is barrier-free if needed by the person;
(l) Maintain a written staffing plan;
(m) Provide a written staffing schedule for each site where services are provided;
(n) Comply with the requirements of the Health-Care Facility Unlicensed Personnel Criminal Background Check Act of 1998, effective April 20, 1999 (D.C. Law 12-238; D.C. Official Code § 44-551 *et seq.*);
(o) Ensure that each staff member has been screened for communicable disease, in accordance with the guidelines issued by the CDC;
(p) Meet the DDS Basic Assurances set forth in the Human Care Agreement;
(q) Provide DDS and the Medical Assistance Administration, Department of Health, with at least ninety (90) days advance written notice of intent to terminate residential habilitation services; and
(r) Provide persons receiving residential habilitation services with at least thirty (30) days advance written notice prior to the effective date of the termination of services in the form prescribed by DDS and be responsible for notifying DDS of those persons who are undergoing treatment of an acute condition.

946.11 Each person providing residential habilitation services for a provider under section 946.10 shall meet all of the requirements in Chapter 19 to Title 29 DCMR, section 1911.

946.12 Each provider shall cooperate with DDS case management in providing access and information as requested for case management visits and reviews.

946.13 Each provider of residential habilitation services shall review the person's IHP or ISP and Plan of Care goals, objectives, and activities at least quarterly and more often, as necessary. The provider shall propose modifications to the IHP or ISP and Plan of Care, as appropriate. The results of these reviews shall be submitted to the case manager within thirty (30) days of the end of each quarter. Each provider shall participate in IHP or ISP and Plan of Care development so that community integration goals are clearly defined. Each

provider shall also assist in the coordination of all services that a person may receive.

946.14 Each provider of residential habilitation services shall maintain progress notes on a weekly basis, or more frequently if indicated, which include: progress in meeting each goal in the ISP; any unusual health or behavioral events or change in status; a recording of visitors and the person's participation in the visit; a listing of all community activities attended by the person and the response to those activities; and any matter requiring follow-up on the part of the service provider or DDS. Each provider shall also maintain participant attendance rosters on a daily basis and current financial records of expenditures of public and private funds for each person.

946.15 Each provider of residential habilitation services shall maintain all records and reports for at least six (6) years after the person's date of discharge.

946.16 Residential habilitation services shall not be reimbursed when provided by a member of the person's family.

946.17 Reimbursement for residential habilitation services shall not include:

(a) Cost of room and board;
(b) Cost of facility maintenance, upkeep and improvement; and
(c) Activities for which payment is made by a source other than Medicaid.

946.18 The reimbursement rate for residential habilitation services is calculated based on the staff being awake while on duty and shall include:

(a) All supervision of direct support staff;
(b) All nursing provided in the residence for medication administration, physician ordered protocols and procedures, charting, other supports as per physician's orders, and maintenance of Health Management Care Plan;
(c) Transportation to day programs, employment, professional appointments, community outings and events;
(d) Programmatic supplies; and
(e) General and administrative fees for Waiver services.

The billable unit of service for residential habilitation services shall be fifteen (15) minutes. A provider shall provide at least eight (8) minutes of service in a span of fifteen (15) continuous minutes to be able to bill a unit of service.

946.19 The reimbursement rate for residential habilitation services for a GHMRP with four (4) individuals shall be as follows:

(a) The Basic Support Level 1 daily rate shall be two hundred seventeen dollars ($217.00) for a direct care staff support ratio of 1:4 for all awake and overnight hours billable in quarter hour units of two dollars and twenty-six cents ($2.26) per unit;

(b) The Moderate Support Level 2 daily rate shall be three hundred forty-four dollars ($344.00) for a direct care staff support ratio of 1:4 for awake overnight and 2:4 during all awake hours when individuals are in the home and adjusted for increased absenteeism billable in quarter hour units of three dollars and fifty-eight cents ($3.58) per unit;

(c) The Enhanced Moderate Support Level 3 daily rate shall be four hundred eighty-four dollars ($484.00) for a direct care staff support ratio of 2:4 staff awake overnight and 2:4 during all awake hours when individuals are in the home and adjusted for increased absenteeism billable in quarter hour units of five dollars and four cents ($5.04) per unit;

(d) The Intensive Support daily rate shall be five hundred sixty-one dollars ($561.00) for a direct care staff support ratio of 2:4 staff awake overnight and 3:4 during all awake hours when individuals are in the home and adjusted for increased absenteeism billable in quarter hour units of five dollars and eighty-five cents ($5.84) per unit; and

(e) There shall be a specialized service rate determined through a negotiated request for proposals process when determined necessary by DDS to serve individuals with extraordinary medical and/or behavioral health needs.

946.20 The reimbursement rate for residential habilitation services for a GHMRP with five (5) to six (6) individuals shall be as follows:

(a) The Basic Support Level 1 daily rate shall be two hundred seventy-two dollars ($272.00) for a direct care staff support ratio of 1:5/6 staff awake overnight and 2:5/6 during all awake hours when individuals are in the home billable in quarter hour units of two dollars and eighty-three cents ($2.83) per unit;

(b) The Moderate Support Level 2 daily rate shall be three hundred sixty-seven dollars ($367.00) for a direct care staff support ratio of 2:5/6 staff awake overnight and 2:5/6 during all awake hours when individuals are in the home and adjusted for increased absenteeism billable in quarter hour units of three dollars and eighty-two cents ($3.82) per unit;

(c) The Enhanced Moderate Support Level 3 daily rate shall be four hundred forty-four dollars ($444.00) for a staff support ratio of 2:5/6 staff awake overnight and 3:5/6 during all awake hours when individuals are in the home and adjusted for increased absenteeism billable in quarter hour units of four dollars and sixty-three cents ($4.63) per unit;

(d) The Intensive Support daily rate shall be five hundred fifty-five dollars ($551.00) for increased direct care staff support for sleep hours to 2:5/6 for staff awake overnight support and 4:5/6 during all awake hours when individuals are in the home and adjusted for increased absenteeism billable in quarter hour units of five dollars and seventy-four cents ($5.74) per unit; and

(e) There shall be a specialized service rate determined through a negotiated request for proposals process when determined necessary by DDS to serve individuals with extraordinary medical and/or behavioral health needs.

946.21 Acuity evaluation to set support levels shall be determined by a committee appointed by the Director of DDS that shall review current staffing levels, available health and behavioral records, and any available standardized acuity instrument results to determine if a person has a health or behavioral acuity that requires increased supports. Individuals may be assessed at a support level that is consistent with their current staffing level if other acuity indicators are not in place.

946.22 Residential habilitation services shall not be billed concurrently with the following Waiver services:

(a) Environmental accessibility adaptation;
(b) Vehicle modifications;
(c) Supported living;
(d) Respite;
(e) Host home;
(f) Live-in caregiver;
(g) In-home supports;
(h) Personal Emergency Response System; or
(i) Transportation.

946.23 Residential habilitation services shall not be billed when the person is hospitalized, on vacation, or for any other period in which the person is not residing at the GHMRP. The reimbursement rates assume a ninety-three (93) percent annual occupancy, and unanticipated absence from day/vocational services or employment due to illness, and planned absence for holidays. Daily activities such as day treatment, day habilitation services, prevocational services, supported employment services, or employment are typically scheduled for five (5) hours per day five (5) days per week, and scheduling day activities in excess of five (5) hours per day five (5) days per week shall result in an hour-for-hour decrease in the residential habilitation services reimbursement. Reimbursement shall be calculated based on the time the person is scheduled to be in his or her place of residence, except the provider may include the time that the individual is being transported by the provider to

day programs, employment, professional appointments, community outings and events.

946.24 Direct care staff shall be dressed, alert, and maintain support logs during the entire shift of awake hours. The provider shall maintain a log of scheduled activities that specifies when the person is scheduled to be in his or her home on a daily basis.

946.99 DEFINITIONS

When used in this section, the following terms and phrases shall have the meanings ascribed:

Awake – For purposes of staffing and determining the reimbursement rates for residential habilitation services, awake hours of the day with absence from day program, weekend, or holiday shall be approximately 6:00 a.m. to 10:00 p.m., and for purposes of awake hours for all other days shall be approximately 6:00 am to 10:00 a.m. and 2:00 p.m. to 10:00 p.m.

Communicable Disease – Shall have the same meaning as set forth in section 201 of Chapter 2 of Title 22, District of Columbia Municipal Regulations.

Community Integration – Participation in events outside of the person's place of residence that may include shopping, dining, attending movies, plays, and other social events. The plan from section 946.13 should identify community and social events appropriate for the person.

Direct Care Staff – Individuals employed to work in the GHMRP who render the day-to-day, personal assistance that persons require in order to meet the goals of his or her IHP or ISP and Plan of Care.

Family – Any person who is related to the person receiving services by blood, marriage, or adoption.

Group Home for Mentally Retarded Persons (GHMRP) – A community residence facility, other than an intermediate care facility for persons with mental retardation, that provides a homelike environment for at least four (4) but no more than six (6) related or unrelated persons with intellectual disabilities who require specialized living arrangements and maintains necessary staff, programs, support services, and equipment for their care and habilitation.

Health Management Care Plan- A written document designed to evaluate an individual's health care status and to provide recommendations regarding the treatment and amelioration of health care issues by identifying types of risk, interventions to manage identified risks, individuals responsible for carrying out

interventions, and individuals responsible for providing evaluation of outcomes and timeframes.

Individual – individual participant enrolled in the Waiver receiving services.

Individual Habilitation Plan (IHP) – That plan as set forth in section 403 of the Mentally Retarded Citizens Constitutional Rights and Dignity Act of 1978, effective March 3, 1979 (D.C. Law 2-137; D.C. Official Code § 7-1304.03).

Individual Support Plan (ISP) – The successor to the individual habilitation plan (IHP) as defined in the 2001 Plan for Compliance and Conclusion of *Evans v. Williams*.

Interdisciplinary Team – A group of persons with special training and experience in the diagnosis and habilitation of mentally retarded persons who have the responsibility of performing a comprehensive evaluation of the person while participating in the development, implementation, and monitoring of the person's IHP or ISP and Plan of Care.

Overnight – For purposes of staffing and determining the reimbursement rates for residential habilitation services, the overnight period shall be approximately from 10:00 p.m. to 6:00 a.m.

Person/ Participant– An individual with intellectual and developmental disabilities who has been determined eligible to receive services under the Waiver.

Plan of Care – A written service plan that meets the requirements set forth in section 1904.4 of Title 29 DCMR, is signed by the person receiving services, and is used to prior authorize Waiver services.

Progress Notes – Notes that observe (1) progress in meeting each goal in the IHP or ISP and Plan of Care, which is the responsibility of the residence; (2) the list of community activities for the week and the participant's response to each activity; (3) any unusual health events; (4) any visitors the participant received; and (5) anything requiring follow-up or action.

Provider – Any non-profit, home health agency, social service agency or other business entity that provides services pursuant to these rules.

Waiver – The Home and Community-based Services Waiver for Persons with Mental Retardation and Developmental Disabilities as approved by the Council of the District of Columbia (Council) and the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS), as may be further amended and approved by the Council and CMS.